

Report to State Government on the Work of the Justice Action Group
Task Force on Administrative Law
January 23, 2003

Purpose: Why we speak: The Justice Action Group (JAG), created in 1995, provides leadership and coordination for the planning and delivery of civil legal assistance and functions as a public voice for the legal services community. It convenes task forces made up of volunteers from the provider community, the Maine Bar, and other concerned constituencies to consider specific problems in the availability of civil legal services and to develop solutions to those problems.

Since 1999, the JAG has considered issues pertaining to the public's access to justice with respect to Maine's State administrative agencies. The JAG appointed a task force on administrative law which first convened in February 2000. The Task Force, composed of individuals both within and outside of state government, collected information and exchanged views concerning both the positive aspects of administrative agency practice and those practices that could be improved in order to remove barriers to justice that confront the public.

"Access to justice" in the administrative or governmental context refers not only to procedures to provide fairness in administrative hearings, but also to the ability of members of the public to obtain the information and assistance that is necessary to protect their legal rights, such as the ability to communicate with and access agency personnel when necessary to resolve questions.

The JAG has evaluated the work of administrative agencies, first by reference to what is legally required, and then by reference to what process is "fair" in circumstances where it may not be clear what the law requires, but best practices can be ascertained. It is worth emphasizing, however, that the recommendations of the Task Force set forth below also are consistent with good management practices.

The Task Force has recognized existing efforts of state agencies to provide prompt, helpful and accurate services. When the executive branch is able to fulfill its responsibility to implement the laws in a consistent and fair manner, there is greater trust in government. This translates into enhanced customer satisfaction, improved employee morale and higher productivity. To the extent that state government can achieve the goals of providing reasonable access to the public and conducting fair proceedings, time and resources which otherwise might be spent on responding to complaints and litigation from aggrieved persons will be saved.

The JAG believes that good state agency practices need to be emphasized in order to set examples. At its November 2002 Access to Justice conference, JAG recognized good telephone, application, and Website practices:

- It recognized the Department of Human Services MaineCare Healthy Maine Prescriptions and Cub Care programs as models for ease and speed in applying for

governmental benefits. Their excellent marketing efforts are designed to inform the parents of nearly every child about Medicaid coverage.

- The Department of Labor Customer Service Unit was recognized as a model for telephone service that is user friendly, provides accurate and timely information and is easy to access. Its central customer telephone service makes every effort to answer any question on the first contact.
- Finally, the Judicial Department was recognized for providing model WebPages for state government. The website is simple and consistent, has easy navigation links and emphasizes the most useful aspects of the site.

We need to build on these excellent models. Unfortunately, the record of state government has been mixed. All state agencies must strive to provide timely and appropriate responses to reasonable inquiries and ensure the fairness of their proceedings. The JAG does not want to be critical, but wants to assist state agencies so that the good examples can be emulated and problems can be ameliorated.

A change in administrations provides a good opportunity for agencies to review their policies and practices in comparison to the outline below. The JAG believes that a conscientious review by each agency is well worth the effort.

I. Information about Agency Services or Benefits

Agencies should promptly respond to inquiries about their services or procedures. If an agency receives or provides information over the phone, it should ensure that it has sufficient telephone lines to allow persons to get through to the agency without undue delay.

Agencies should willingly provide information about their services to persons served or regulated by the agencies. The information should be as clear as possible, whether provided telephonically, in writing, or via the Internet.

A high institutional value should be placed on communication with customers. Agencies should be consistent in responding or otherwise providing information to members of the public, regardless of how or by whom the information is provided. Whenever the staff member receiving a request does not have the necessary information, a customer should be referred to the appropriate office. A statewide commitment is needed, so that every employee recognizes that s/he is responsible to the public.

The myriad of administrative agencies in Maine communicate with the public in many different ways. The Executive branch should strive for consistency across those agencies and across the various modes of communication employed by those agencies. The State should continue its laudable efforts to make consistent agency websites and features, such as its "How Do I" feature, see <http://www.state.me.us/portal/customize>.

II. Applications for Agency Services or Benefits

Applications for agency services or benefits should be as clear and simple as possible to elicit essential information. All applications should be processed as promptly as possible, within statutory or regulatory time limits.

Agencies should maximize the public's online opportunities to request services or benefits and file applications or forms. (For example, some of the things that members of the public can currently do online are: purchase hunting and fishing licenses; renew vehicle registrations and professional licenses; file unemployment compensation appeals; and pay fines and state taxes.)

Agencies should affirmatively assist persons who are unable to navigate the administrative process, such as persons with disabilities or limited English proficiency.

III. Notice of Agency Action

Agencies should give affected persons, such as applicants for benefits or services and persons regulated by the agency, written notice of agency actions. Such notice should:

- ✂ be written in clear and simple language, readable at a 6th grade level;
- ✂ state the action taken or proposed to be taken;
- ✂ state the specific factual reasons for the action;
- ✂ state the specific statutes and regulations that support the action;
- ✂ inform the person of the right to dispute the action;
- ✂ clearly and conspicuously state the way to file an appeal; and
- ✂ state the manner and time limit for requesting a stay.

An agency decision that grants less than the full amount of assistance requested is a denial, in part, of the requested assistance. Notice of a partial denial should contain the essential elements set forth above.

To the extent that an agency permits further review of its decisions within the agency, it should allow affected parties sufficient time to decide whether to commence that review. Persons affected by agency decisions need time to: comprehend the decision; consult with counsel or others of their choice concerning the decision and its implications; decide whether or not to appeal; and actually file the appeal.

IV. Adjudication

As the new Administration takes over the reins of government, the JAG recommends that agency heads review their agency's policies to ensure that they provide the essential features of due process and administrative justice, set forth below, in all adjudicatory proceedings involving hearings.

A. Notice of Hearing

Hearing notices should inform people of their rights in a readable form. Specifically, hearing notices should:

- ✂ state the time and place of the hearing;
- ✂ clearly state the specific facts and the statutes or regulations supporting the action under review, to enable the person affected to prepare a defense to the action;
- ✂ state that parties may be represented by counsel, or other persons, at the hearing and inform the person affected of the address and phone number of free legal services that may be available to assist with a hearing;
- ✂ allow sufficient time to prepare for the hearing, and state the manner by which a continuance may be requested;
- ✂ inform the parties how to review or get copies of relevant agency files, records, or other documents;
- ✂ inform the parties of the right to and the method for requesting subpoenas;
- ✂ inform the parties of the right to present evidence and witnesses in support of the appeal, and the methods for doing so; and
- ✂ inform the parties of the opportunity to request the sequestration of witnesses during the hearing.

B. Impartial Hearing Officer

The Administrative Hearing Officer must be impartial. The Hearing Officer shall:

- ✂ treat all parties with respect;
- ✂ be unbiased;
- ✂ not have a conflict of interest;
- ✂ not engage in ex parte contacts with any party; and
- ✂ not be subject to retaliation by the agency for exercising impartiality.

Agencies should ensure that their administrative hearing officers are qualified to hear and decide appeals. A legal background is preferred, and continuing legal training is necessary, to enable hearing officers to understand the elements and the importance of impartiality. Adoption of a statewide code of ethics for administrative officers, such as the American Bar Association Model Code of Judicial Conduct for State Administrative Law Judges, would provide a foundation for impartiality.

The administration should consider establishment of a central panel of administrative law judges to conduct hearings and decide administrative cases, as have most states. This would provide a powerful bulwark against inappropriate influences within the agency and send an unmistakable message to the public that the decision maker is independent of the agency.

C. Decision based on the Record

The decision of the hearing officer must be based on the Record. The hearing officer cannot rely on extra-record information. Both line staff and management must be educated on the absolute prohibition against ex parte contacts. The

Record shall consist of all evidence received or considered by the Hearing Officer in reaching a decision, including facts of which the Hearing Officer took Official Notice. The parties have the right to know of, and respond to, all evidence prior to the hearing officer's decision.

D. Settlement of Administrative Agency Cases

Agency personnel should avoid over-reaching when attempting to resolve professional/occupational licensing cases with *pro se* parties. Agency personnel should not encourage licensees to enter into legally-binding administrative "consent agreements" without informing licensees of their right to counsel and without a reasonable basis for believing that the licensees are knowingly waiving their procedural rights.

V. Final Decision

Final agency decisions should be promptly communicated to interested persons and to their representatives. Decisions should be written in clear and simple language, and should state the action taken, the factual reasons and the legal reasons for the agency's decision. The factual and legal basis for the agency's decisions should be specific enough to allow the interested persons to fully understand the basis for the decision, so as to enable an interested person to assess whether to appeal the agency action. The decision should contain findings of basic facts, as well as ultimate conclusions of fact and law that form the basis for its decision. The notice should contain a clear and simple statement explaining how the decision may be appealed to court and the time limits for requesting an appeal.

Agency personnel may assist dissatisfied persons in understanding the decision and how to appeal it, but should not discourage persons from exercising their right to appeal or their right to consult with counsel.

VI. Post-Decision Agency Actions

If a party is successful in a judicial appeal of an agency decision, the agency should make any necessary alterations in its policies to comply with the court's final judgment, to ensure that similarly-situated persons are treated in a like manner.